

1 Christopher Sproul (State Bar No. 126398)
2 Stuart Wilcox (State Bar No. 327726)
ENVIRONMENTAL ADVOCATES
3 5135 Anza Street
San Francisco, California 94121
4 Telephone: (415) 533-3376
Facsimile: (415) 358-5695
5 Email: csproul@enviroadvocates.com
stuart.wilcox5@gmail.com

6
7 Attorneys for Plaintiff
Our Children's Earth Foundation

8 TODD KIM
9 Assistant Attorney General

10 Mark A. Rigau (CA Bar No. 223610)
11 Environment and Natural Resources Division
450 Golden Gate Avenue, Suite 07-6714
12 San Francisco, California 94102
Tel: 415-744-6487/Fax: 415-552-7005
13 Email: mark.rigau@usdoj.gov

14 Attorneys for Defendant

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 OUR CHILDREN'S EARTH FOUNDATION, a
18 non-profit corporation,

Civil Case No. 3:19-cv-7125-WHA

19 Plaintiff,

**FOURTH STIPULATION TO MODIFY
CONSENT DECREE DEADLINE AND
~~PROPOSED ORDER~~**

20 v.

22 MICHAEL S. REGAN, in his official capacity
23 as Administrator of the United States
24 Environmental Protection Agency,

25 Defendant.

Pursuant to Civil L.R. 6-1(b), 6-2, 7-12, and paragraph 11 of the Consent Decree (“Consent Decree”) entered in this case (Dkt. No. 32-1), Plaintiff, Our Children’s Earth Foundation, and defendants, the United States Environmental Protection Agency *et al.* (“EPA”), (together, “the Parties”) stipulate to further continue the deadline for the appropriate EPA official to sign either: (i) a final rule containing revisions to National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) Subpart M under section 112(d)(6) of the Clean Air Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M, extending the deadline from February 1, 2024 to **January 31, 2025**.

On October 14, 2020, the Parties filed a motion to approve the Consent Decree to resolve claims Plaintiff brought against EPA. Dkt. No. 32. The Consent Decree included several deadlines where EPA (1) agreed to either review or revise New Source Performance Standards (“NSPS”) and NESHAPs governing a number of sources by dates certain and (2) agreed to sign either final rules or final determinations not to revise NSPSs and NESHAPs governing a number of sources by dates certain. *See* Consent Decree ¶¶ 2-8. The Court signed the Consent Decree on October 20, 2020. Dkt. No. 33.

Paragraph 11 of the Consent Decree provides that “[t]he deadlines set forth in Paragraphs 2–8 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.” Consent Decree ¶ 11.

Paragraph 8.b of the Consent Decree specifically establishes that “EPA shall sign either: (i) a final rule containing revisions [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M” by no later than December 1, 2022. Consent Decree ¶ 8.b.

Invoking Paragraph 11 of the Consent Decree, on August 18, 2022, the Parties stipulated to continue the December 1, 2022 deadline to June 1, 2023. Dkt. Nos. 41, 42. On April 11, 2023, the Parties stipulated to further continue the June 1, 2023 deadline to February 1, 2024. Dkt. Nos. 43, 44. On

1 November 15, 2023, the Parties stipulated to continue the deadline to December 15, 2024. Dkt. No. 45.
 2 On November 22, 2023, the Court granted an extension until August 31, 2024. Dkt. No. 46. The Parties
 3 now stipulate to continue the deadline to January 31, 2025.

4 The Parties agree that continuing the current August 31, 2024 deadline to January 31, 2025 for
 5 EPA to take final action as noted above is fair, reasonable, and in the public's interest.

6 On December 14, 2022, EPA published a revised risk determination under the Toxic Substances
 7 Control Act ("TSCA") with respect to Perchloroethylene ("PCE") concluding "that PCE, as a whole
 8 chemical substance, presents an unreasonable risk of injury to health when evaluated under its
 9 conditions of use." 87 Fed. Reg. 76481 (Dec. 14, 2022); *see also* 15 U.S.C. § 2605(a) (when EPA
 10 determines that a chemical substance presents an unreasonable risk to health, TSCA requires EPA to
 11 promulgate a rule "to the extent necessary so that [the chemical substance] no longer presents such
 12 risk"). Accordingly, EPA began developing a TSCA regulation with respect to PCE. 87 Fed. Reg. at
 13 76487. Because the forthcoming final TSCA rule regulating PCE will likely impact how EPA may
 14 address a NESHAP amendment for PCE with respect to dry cleaning facilities, the Parties stipulated for
 15 a continuance of the deadline for EPA to take final action with respect to a NESHAP amendment for
 16 PCE with respect to dry cleaners. Dkt. Nos. 43, 44, 45, 46.

17 EPA has made substantial progress with respect to EPA's TSCA PCE rulemaking. On June 16,
 18 2023, EPA published a notice of proposed rulemaking to address the unreasonable risk of injury to
 19 human health presented by PCE. *See* "Perchloroethylene (PCE); Regulation Under the Toxic Substances
 20 Control Act (TSCA)," 88 Fed. Reg. 39652 (June 16, 2023). EPA has now submitted its final TSCA rule
 21 regulating PCE to the Office of Information and Regulatory Affairs (OIRA), Office of Management and
 22 Budget, for interagency review under Executive Order 12866. Under section 6(b)(2) of Executive Order
 23 12866, 90 calendar days are generally allotted for this interagency review period. The PCE rule was
 24 received by OIRA on May 30, 2024. See OIRA, "Pending EO 12866 Regulatory Review:
 25 Perchloroethylene (PCE); Regulation under the Toxic Substances Control Act (TSCA)," available at
 26 <https://www.reginfo.gov/public/do/eoDetails?rrid=546662> (last accessed June 10, 2024). Accordingly,

1 interagency review is expected to be completed around August 28, 2024. Following interagency review,
2 the final rule must be signed and submitted to the Office of the Federal Register for publication. Because
3 the forthcoming final TSCA rule regulating PCE will not be published until the end of summer or early
4 fall 2024, the Parties agree that EPA will need more time to consider what final action it will take with
5 respect to a NESHAP amendment for PCE emissions at dry cleaning facilities in light of the pending
6 final TSCA rule and agree that an extension of the Consent Decree deadline to January 31, 2025 is
7 reasonable.

8 The Parties have sought three other modifications with respect to deadlines set forth in the
9 Consent Decree and EPA has met every other Consent Decree deadline thus far. *See* Consent Decree ¶¶
10 2.a, 2.b, 3.a, 3.b, 4.a, 4.b, 5.a, 6.a, 6.b, 7.a, 7.b, 8.a.

11 THEREFORE, the Parties stipulate to and request that the Court enter an order continuing the
12 existing deadline of August 31, 2024 for the appropriate EPA official to sign “either: (i) a final rule
13 containing revisions to [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission
14 Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a
15 final determination under section 112(d)(6) not to revise NESHAP Subpart M” to **January 31, 2025**.

16 Respectfully submitted,

17 For Plaintiff:

18 /s/ Stuart Wilcox
19 Stuart Wilcox (State Bar No. 327726)
20 ENVIRONMENTAL ADVOCATES
21 5135 Anza Street
22 San Francisco, California 94121
23 Telephone: (720) 331-0385
24 Fax: (415) 358-5695
25 Email: wilcox@enviroadvocates.com,

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27 Attorney for Plaintiff
Our Children’s Earth Foundation

Dated: June 21, 2024
(Signed and filed on behalf of Plaintiff with written authorization.)

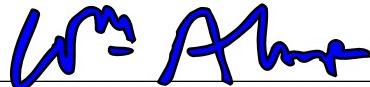
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2 For Defendant:

3 Todd Kim
4 Assistant Attorney General
Environment & Natural Resources Division

5 /s/ Mark A. Rigau
6 Mark A. Rigau
7 Environmental Defense Section
8 Environment and Natural Resources Division
U.S. Department of Justice
450 Golden Gate Ave., Suite 07-6714
San Francisco, California 94102

9 Dated: June 21, 2024

10 PURSUANT TO STIPULATION, IT IS SO ORDERED this 27th day of June, 2024

11
12 
13 Hon. William Alsup
14 United States District Judge